

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEROME LOACH	:	CIVIL ACTION
	:	
v.	:	
	:	
MARTIN L. DRAGOVICH, et al.	:	NO. 96-8701

MEMORANDUM AND ORDER

Fullam, Sr. J. April , 2000

The United States Magistrate Judge to whom this habeas corpus case was referred held an evidentiary hearing on March 17, 2000 and, on March 31, 2000, filed a report and recommendation, recommending denial of the petition. I readily agree with the thorough exposition of the applicable legal principles set forth in the Magistrate's report, and I also agree with the Magistrate's conclusion that the petition should be denied on the merits. I note, however, that the report is in error in suggesting that "On May 13, 1998...Judge Fullam ordered that the government respond to the substance of the petition. After the Commonwealth responded, Judge Fullam returned the matter to me for further consideration." Actually, the Order of May 13, 1998 was entered by the Magistrate Judge herself, and there was no further referral for further consideration.

I believe, also, that a brief explanation of the lengthy history of this case in this court is in order. The

original petition was filed on December 31, 1996, and assigned to another judge of this court. After lengthy proceedings, the United States Magistrate Judge filed a report and recommendation, recommending that the petition be dismissed for failure to exhaust state court remedies, but also containing the recommendation that the petitioner be permitted to file an amended petition containing only the exhausted claim. Petitioner obtained an extension of time to file objections to the report. His objections were finally filed on August 1, 1997. The record does not reflect any further activity until, on April 21, 1998, the case was reassigned to my docket. The case remained before the Magistrate Judge. On May 13, 1998, the Magistrate Judge concluded that, by that time, the petitioner had indeed exhausted his state court remedies, and that the case should be disposed of on the merits. Counsel was appointed to represent the petitioner, a trial transcript was eventually furnished to petitioner's counsel, and a briefing schedule was established. A hearing was scheduled for November 10, 1999, but eventually continued until March 17, 2000.

At the hearing, petitioner's counsel, with petitioner's consent, withdrew eight of the nine grounds asserted in the petition, leaving for consideration only petitioner's claim that the manner in which the trial judge charged the jury on the various degrees of homicide they would be considering violated

petitioner's constitutional rights, and his contention that his "actual innocence" enabled the court to consider unexhausted claims.

As the Magistrate Judge has pointed out, the trial court's charge to the jury was entirely correct, under Pennsylvania law; and even if it had been erroneous, there would have been no violation of constitutional magnitude. The Magistrate Judge also pointed out, correctly, that the petitioner chose not to offer any evidence on the question of actual innocence.

I'm satisfied that the Magistrate Judge reached the right result in all respects. The petition will be denied.

An Order follows.

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ORDER

AND NOW, this day of April, 2000, IT IS ORDERED:

1. The recommendation of the United States Magistrate Judge is APPROVED.
2. The petition is DENIED, on the merits.
3. There is no basis for issuing a certificate of appealability.

John P. Fullam, Sr. J.